

one deed was delivered to Mr. Smith and back to either Mr. or Mrs. Welty upon the completion and execution by him of this latter deed.

I find that it is relatively immaterial whether or not the deeds were delivered back to Mr. <sup>Welty</sup>/or to Mrs. Welty. The fact that remains, as I understand the law, that where property is to be conveyed to husband and wife as tenants by the entirety, a delivery to either is a delivery to both. Consequently, I would find as a mixed question of law, and fact, that Mr. Welty conveyed his title to Mr. Smith and that Mr. Smith had title to it momentarily as straw or trustee for Mr. and Mrs. Welty; that he executed the deed back to them and that there was a delivery sufficient to pass title to Mr. and Mrs. Welty.

What happened after that, whether or not Mr. Welty took the straw deed to Mr. Smith and gave it back to him to hold; whether or not Mrs. Welty had the remaining deeds in her possession, seems to me legally immaterial, although factually the record of the safe deposit box is consistent with her testimony that she had something in her pocketbook === one of these deeds, at least, that subsequently appeared in the safe deposit box in the joint names of both. The inference would normally be that Mr. Welty did place the deed in that joint box sometime after May 5th because it shows his entry into that box on May 12 at 12:10 p.m., 1972. It then shows that Mildred Marie Welty entered that box on May 18, 1972, at 9:37 a.m., and this deed, exhibit no. 2, is recorded on May 19, 1972. So, as I say, the record<sup>-ing</sup>/of the deed, exhibit no. 2, would seem to be substantially as Mrs. Welty has testified. I do find as a fact, therefore, that there was adequate delivery of these deeds back to Mr. and Mrs. Welty and that the one deed, of course, was subsequently recorded, that being exhibit no. 2.

Those, it seems to me, are the facts and the question would be whether or not on these facts there is sufficient showing to pass title as between the parties. Admittedly, the straw deed was not recorded as we all know. Mr. Nikirk, how much time do you wish to take to research this matter?

Mr. Nikirk: Your Honor, I would like to have until next week.

Court: It is perfectly satisfactory to me. I would suggest that any memorandum, if you decide to write one, that you submit a copy of it to Mr.